

AMENDED IN SENATE JUNE 24, 2014

AMENDED IN SENATE JUNE 11, 2014

AMENDED IN ASSEMBLY MAY 5, 2014

AMENDED IN ASSEMBLY APRIL 21, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2618

**Introduced by Assembly Member John A. Pérez
(Coauthors: Assembly Members Dickinson and Ting)**

February 21, 2014

An act to amend Sections 36601, 36602, 36603.5, 36621, 36622, 36624, 36625, 36628.5, 36632, 36650, and 36651 of, to amend and renumber Sections 36606, 36611, 36612, 36613, 36614, and 36614.5 of, and to add Sections 36609.5, 36614.6, 36614.7, and 36615.5 to, the Streets and Highways Code, relating to benefit assessments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2618, as amended, John A. Pérez. Property and business improvement areas: benefit assessments.

The California Constitution generally requires that assessments, fees, and charges be submitted to property owners for approval or rejection after the provision of written notice and the holding of a public hearing.

The Property and Business Improvement District Law of 1994 authorizes cities to form property and business improvement districts that may levy assessments within a district for the purpose of making improvements and promoting activities of benefit to the properties and businesses within the district, and defines various terms for purposes of the law.

The law requires a management district plan to include, among other things, the name of the proposed district, a description of the boundaries of the district, and the total annual amount proposed to be expended for improvements, maintenance and operations, and debt service in each year of operation of the district.

This bill would require a management district plan to additionally include, for districts that are property-based, the proportionate special benefit derived by each identified parcel, to be determined as prescribed, the total amount of all special benefits to be conferred on the properties located within the property-based district, the total amount of any general benefit, and a detailed engineer's report, as specified.

This bill would define the term "special benefit" for purposes of that law to mean a particular and distinct benefit over and above general benefits, as defined, conferred on real property located in a district or to the public at large, and would specify that special benefit includes incidental, secondary, or collateral effects that arise even if those effects benefit property or persons not assessed.

The law additionally requires the city council to adopt a resolution of formation containing, among other things, a statement that the improvements and activities to be provided in the district will be funded by the levy of the assessments and a finding that the property or businesses within the area of the district will be benefited by the improvements and activities funded by the assessments proposed to be levied.

This bill would require a finding that the property within the district will receive a special benefit and the total amount of all special benefits to be conferred on the properties within the property-based district.

The law authorizes a city council to levy assessments on businesses or on property owners, or a combination of the 2, and requires the city council to structure the assessments on whatever manner it determines corresponds with the distribution of benefits from the proposed improvements and activities.

This bill would require any property-based assessment to be proportional to the special benefit conferred on the assessed property, and conform with specified requirements and would prohibit the assessment from exceeding the reasonable cost of the proportional special benefit conferred, as specified.

The bill would make various conforming changes to specify that the provisions described above apply to maintenance as well as improvements and activities.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 36601 of the Streets and Highways Code
2 is amended to read:

3 36601. The Legislature finds and declares all of the following:
4 (a) Businesses located and operating within business districts
5 in some of this state's communities are economically
6 disadvantaged, are underutilized, and are unable to attract
7 customers due to inadequate facilities, services, and activities in
8 the business districts.

9 (b) It is in the public interest to promote the economic
10 revitalization and physical maintenance of business districts in
11 order to create jobs, attract new businesses, and prevent the erosion
12 of the business districts.

13 (c) It is of particular local benefit to allow business districts to
14 fund business related improvements, maintenance, and activities
15 through the levy of assessments upon the businesses or real
16 property that receive benefits from those improvements.

17 (d) Assessments levied for the purpose of conferring special
18 benefit upon the real property or businesses in a business district
19 are not taxes for the general benefit of a city, even if property or
20 persons not assessed receive incidental, secondary, or collateral
21 effects that benefit them.

22 (e) Property and business improvement districts formed
23 throughout this state have conferred special benefits upon
24 properties and businesses within their districts and have made
25 those properties and businesses more useful by providing the
26 following benefits:

27 (1) Crime reduction. A study by the Rand Corporation has
28 confirmed a 12-percent reduction in the incidence of robbery and
29 an 8-percent reduction in the total incidence of violent crimes
30 within the 30 districts studied.

31 (2) Job creation.

32 (3) Business attraction.

33 (4) Business retention.

34 (5) Economic growth.

35 (6) New investments.

1 (f) With the dissolution of redevelopment agencies throughout
2 the state, property and business improvement districts have become
3 even more important tools with which communities can combat
4 blight, promote economic opportunities, and create a clean and
5 safe environment.

6 (g) Since the enactment of this act, the people of California have
7 adopted Proposition 218, which added Article XIII D to the
8 Constitution in order to place certain requirements and restrictions
9 on the formation of, and activities, expenditures, and assessments
10 by property-based districts. Article XIII D of the Constitution
11 provides that property-based districts may only levy assessments
12 for special benefits.

13 (h) The act amending this section is intended to provide the
14 Legislature's guidance with regard to this act, its interaction with
15 the provisions of Article XIII D of the Constitution, and the
16 determination of special benefits in property-based districts.

17 (1) The lack of legislative guidance has resulted in uncertainty
18 and inconsistent application of this act, which discourages the use
19 of assessments to fund needed improvements, maintenance, and
20 activities in property-based districts, contributing to blight and
21 other underutilization of property.

22 (2) Activities undertaken for the purpose of conferring special
23 benefits upon property to be assessed inherently produce incidental,
24 secondary, or collateral effects that benefit property or persons not
25 assessed. Therefore, for special benefits to exist as a separate and
26 distinct category from general benefits, the incidental, secondary,
27 or collateral effects of those special benefits are inherently part of
28 those special benefits. The mere fact that special benefits produce
29 incidental, secondary, or collateral effects that benefit property or
30 persons not assessed does not convert any portion of those special
31 benefits or their incidental, secondary, or collateral effects into
32 general benefits.

33 (3) It is of the utmost importance that property-based districts
34 created under this act have clarity regarding restrictions on
35 assessments they may levy and the proper determination of special
36 benefits. Legislative clarity with regard to this act will provide
37 districts with clear instructions and courts with legislative intent
38 regarding restrictions on property-based assessments, and the
39 manner in which special benefits should be determined.

1 SEC. 2. Section 36602 of the Streets and Highways Code is
2 amended to read:

3 36602. The purpose of this part is to supplement previously
4 enacted provisions of law that authorize cities to levy assessments
5 within property and business improvement districts, to ensure that
6 those assessments conform to all constitutional requirements and
7 are determined and assessed in accordance with the guidance set
8 forth in this act. This part does not affect or limit any other
9 provisions of law authorizing or providing for the furnishing of
10 improvements or activities or the raising of revenue for these
11 purposes.

12 SEC. 3. Section 36603.5 of the Streets and Highways Code is
13 amended to read:

14 36603.5. Any provision of this part that conflicts with any other
15 provision of law shall prevail over the other provision of law, as
16 to districts created under this part.

17 SEC. 4. Section 36606 of the Streets and Highways Code is
18 amended and renumbered to read:

19 36606.5. “Assessment” means a levy for the purpose of
20 acquiring, constructing, installing, or maintaining improvements
21 and ~~promoting~~ *providing* activities that will provide certain benefits
22 to properties or businesses located within a property and business
23 improvement district.

24 SEC. 5. Section 36609.5 is added to the Streets and Highways
25 Code, to read:

26 36609.5. “General benefit” means, for purposes of a
27 property-based district, any benefit that is not a “special benefit”
28 as defined in Section 36615.5.

29 SEC. 6. Section 36611 of the Streets and Highways Code is
30 amended and renumbered to read:

31 36614.5. “Property and business improvement district,” or
32 “district,” means a property and business improvement district
33 established pursuant to this part.

34 SEC. 7. Section 36612 of the Streets and Highways Code is
35 amended and renumbered to read:

36 36614. “Property” means real property situated within a district.

37 SEC. 8. Section 36613 of the Streets and Highways Code is
38 amended and renumbered to read:

39 36606. “Activities” means, but is not limited to, all of the
40 following that benefit businesses or real property in the district:

1 (a) Promotion of public events.

2 (b) Furnishing of music in any public place.

3 (c) Promotion of tourism within the district.

4 (d) Marketing and economic development, including retail
5 retention and recruitment.

6 (e) Providing security, sanitation, graffiti removal, street and
7 sidewalk cleaning, and other municipal services supplemental to
8 those normally provided by the municipality.

9 (f) Other services provided for the purpose of conferring special
10 benefit upon assessed businesses and real property located in the
11 district.

12 SEC. 9. Section 36614 of the Streets and Highways Code is
13 amended and renumbered to read:

14 36611. “Management district plan” or “plan” means a proposal
15 as defined in Section 36622.

16 SEC. 10. Section 36614.5 of the Streets and Highways Code
17 is amended and renumbered to read:

18 36612. “Owners’ association” means a private nonprofit entity
19 that is under contract with a city to administer or implement
20 improvements, maintenance, and activities specified in the
21 management district plan. An owners’ association may be an
22 existing nonprofit entity or a newly formed nonprofit entity. An
23 owners’ association is a private entity and may not be considered
24 a public entity for any purpose, nor may its board members or staff
25 be considered to be public officials for any purpose.
26 Notwithstanding this section, an owners’ association shall comply
27 with the Ralph M. Brown Act (Chapter 9 (commencing with
28 Section 54950) of Part 1 of Division 2 of Title 5 of the Government
29 Code), at all times when matters within the subject matter of the
30 district are heard, discussed, or deliberated, and with the California
31 Public Records Act (Chapter 3.5 (commencing with Section 6250)
32 of Division 7 of Title 1 of the Government Code), for all records
33 relating to activities of the district.

34 SEC. 11. Section 36614.6 is added to the Streets and Highways
35 Code, to read:

36 36614.6. “Property-based assessment” means any assessment
37 made pursuant to this part upon real property.

38 SEC. 12. Section 36614.7 is added to the Streets and Highways
39 Code, to read:

1 36614.7. "Property-based district" means any district in which
2 a city levies a property-based assessment.

3 SEC. 13. Section 36615.5 is added to the Streets and Highways
4 Code, to read:

5 36615.5. "Special benefit" means, for purposes of a
6 property-based district, a particular and distinct benefit over and
7 above general benefits conferred on real property located in a
8 district or to the public at large. Special benefit includes incidental,
9 secondary, or collateral effects that arise from the improvements,
10 maintenance, or activities of property-based districts even if those
11 incidental, secondary, or collateral effects benefit property or
12 persons not assessed. Special benefit excludes general enhancement
13 of property value.

14 SEC. 14. Section 36621 of the Streets and Highways Code is
15 amended to read:

16 36621. (a) Upon the submission of a written petition, signed
17 by the property or business owners in the proposed district who
18 will pay more than 50 percent of the assessments proposed to be
19 levied, the city council may initiate proceedings to form a district
20 by the adoption of a resolution expressing its intention to form a
21 district. The amount of assessment attributable to property or a
22 business owned by the same property or business owner that is in
23 excess of 40 percent of the amount of all assessments proposed to
24 be levied, shall not be included in determining whether the petition
25 is signed by property or business owners who will pay more than
26 50 percent of the total amount of assessments proposed to be levied.

27 (b) The petition of property or business owners required under
28 subdivision (a) shall include a summary of the management district
29 plan. That summary shall include all of the following:

- 30 (1) A map showing the boundaries of the district.
31 (2) Information specifying where the complete management
32 district plan can be obtained.
33 (3) Information specifying that the complete management district
34 plan shall be furnished upon request.

35 (c) The resolution of intention described in subdivision (a) shall
36 contain all of the following:

- 37 (1) A brief description of the proposed improvements,
38 maintenance, and activities, the amount of the proposed assessment,
39 a statement as to whether the assessment will be levied on property
40 or businesses within the district, a statement as to whether bonds

1 will be issued, and a description of the exterior boundaries of the
2 proposed district, *which may be made by reference to any plan or*
3 *map that is on file with the city clerk.* The descriptions and
4 statements do not need to be detailed and shall be sufficient if they
5 enable an owner to generally identify the nature and extent of the
6 improvements, maintenance, and activities, and the location and
7 extent of the proposed district.

8 (2) A time and place for a public hearing on the establishment
9 of the property and business improvement district and the levy of
10 assessments, which shall be consistent with the requirements of
11 Section 36623.

12 SEC. 15. Section 36622 of the Streets and Highways Code is
13 amended to read:

14 36622. The management district plan shall include, but is not
15 limited to, all of the following:

16 (a) If the assessment will be levied on property, a map of the
17 district in sufficient detail to locate each parcel of property and, if
18 businesses are to be assessed, each business within the district. If
19 the assessment will be levied on businesses, a map that identifies
20 the district boundaries in sufficient detail to allow a business owner
21 to reasonably determine whether a business is located within the
22 district boundaries. If the assessment will be levied on property
23 and businesses, a map of the district in sufficient detail to locate
24 each parcel of property and to allow a business owner to reasonably
25 determine whether a business is located within the district
26 boundaries.

27 (b) The name of the proposed district.

28 (c) A description of the boundaries of the district, including the
29 boundaries of benefit zones, proposed for establishment or
30 extension in a manner sufficient to identify the affected ~~lands~~
31 *property* and businesses included, *which may be made by reference*
32 *to any plan or map that is on file with the city clerk.* The boundaries
33 of a proposed property assessment district shall not overlap with
34 the boundaries of another existing property assessment district
35 created pursuant to this part. This part does not prohibit the
36 boundaries of a district created pursuant to this part to overlap with
37 other assessment districts established pursuant to other provisions
38 of law, including, but not limited to, the Parking and Business
39 Improvement Area Law of 1989 (Part 6 (commencing with Section
40 36500)). This part does not prohibit the boundaries of a business

1 assessment district created pursuant to this part to overlap with
2 another business assessment district created pursuant to this part.
3 This part does not prohibit the boundaries of a business assessment
4 district created pursuant to this part to overlap with a property
5 assessment district created pursuant to this part.

6 (d) The improvements, maintenance, and activities proposed
7 for each year of operation of the district and the maximum cost
8 thereof. If the improvements, maintenance, and activities proposed
9 for each year of operation are the same, a description of the first
10 year's proposed improvements, maintenance, and activities and a
11 statement that the same improvements, maintenance, and activities
12 are proposed for subsequent years shall satisfy the requirements
13 of this subdivision.

14 (e) The total annual amount proposed to be expended for
15 improvements, maintenance, or activities, and debt service in each
16 year of operation of the district. If the assessment is levied on
17 businesses, this amount may be estimated based upon the
18 assessment rate. If the total annual amount proposed to be expended
19 in each year of operation of the district is not significantly different,
20 the amount proposed to be expended in the initial year and a
21 statement that a similar amount applies to subsequent years shall
22 satisfy the requirements of this subdivision.

23 (f) The proposed source or sources of financing, including the
24 proposed method and basis of levying the assessment in sufficient
25 detail to allow each property or business owner to calculate the
26 amount of the assessment to be levied against his or her property
27 or business. The plan also shall state whether bonds will be issued
28 to finance improvements.

29 (g) The time and manner of collecting the assessments.

30 (h) The specific number of years in which assessments will be
31 levied. In a new district, the maximum number of years shall be
32 five. Upon renewal, a district shall have a term not to exceed 10
33 years. Notwithstanding these limitations, a district created pursuant
34 to this part to finance capital improvements with bonds may levy
35 assessments until the maximum maturity of the bonds. The
36 management district plan may set forth specific increases in
37 assessments for each year of operation of the district.

38 (i) The proposed time for implementation and completion of
39 the management district plan.

1 (j) Any proposed rules and regulations to be applicable to the
2 district.

3 (k) (1) A list of the properties or businesses to be assessed,
4 including the assessor's parcel numbers for properties to be
5 assessed, and a statement of the method or methods by which the
6 expenses of a district will be imposed upon benefited real property
7 or businesses, in proportion to the benefit received by the property
8 or business, to defray the cost thereof.

9 (2) In a property-based district, the proportionate special benefit
10 derived by each identified parcel shall be determined exclusively
11 in relationship to the entirety of the capital cost of a public
12 improvement, the maintenance and operation expenses of a public
13 improvement, or the cost of the activities. An assessment shall not
14 be imposed on any parcel that exceeds the reasonable cost of the
15 proportional special benefit conferred on that parcel. Only special
16 benefits are assessable, and a property-based district shall separate
17 the general benefits, if any, from the special benefits conferred on
18 a parcel. Parcels within a property-based district that are owned
19 or used by any city, public agency, the State of California, or the
20 United States shall not be exempt from assessment unless the
21 governmental entity can demonstrate by clear and convincing
22 evidence that those publicly owned parcels in fact receive no
23 special benefit. The value of any incidental, secondary, or collateral
24 effects that arise from the improvements, maintenance, or activities
25 of a property-based district and that benefit property or persons
26 not assessed shall not be deducted from the entirety of the cost of
27 any special benefit or affect the proportionate special benefit
28 derived by each identified parcel.

29 (l) In a property-based district, the total amount of all special
30 benefits to be conferred upon the properties located within the
31 property-based district.

32 (m) In a property-based district, the total amount of general
33 benefits, if any.

34 (n) In a property-based district, a detailed engineer's report
35 prepared by a registered professional engineer certified by the
36 State of California supporting all assessments contemplated by the
37 management district plan.

38 (o) Any other item or matter required to be incorporated therein
39 by the city council.

1 SEC. 16. Section 36624 of the Streets and Highways Code is
2 amended to read:

3 36624. At the conclusion of the public hearing to establish the
4 district, the city council may adopt, revise, change, reduce, or
5 modify the proposed assessment or the type or types of
6 improvements, maintenance, and activities to be funded with the
7 revenues from the assessments. Proposed assessments may only
8 be revised by reducing any or all of them. At the public hearing,
9 the city council may only make changes in, to, or from the
10 boundaries of the proposed property and business improvement
11 district that will exclude territory that will not benefit from the
12 proposed improvements, maintenance, and activities. Any
13 modifications, revisions, reductions, or changes to the proposed
14 assessment district shall be reflected in the notice and map recorded
15 pursuant to Section 36627.

16 SEC. 17. Section 36625 of the Streets and Highways Code is
17 amended to read:

18 36625. (a) If the city council, following the public hearing,
19 decides to establish a proposed property and business improvement
20 district, the city council shall adopt a resolution of formation that
21 shall include, but is not limited to, all of the following:

22 (1) A brief description of the proposed improvements,
23 maintenance, and activities, the amount of the proposed assessment,
24 a statement as to whether the assessment will be levied on property,
25 businesses, or both within the district, a statement on whether
26 bonds will be issued, and a description of the exterior boundaries
27 of the proposed district, *which may be made by reference to any*
28 *plan or map that is on file with the city clerk.* The descriptions and
29 statements need not be detailed and shall be sufficient if they enable
30 an owner to generally identify the nature and extent of the
31 improvements, maintenance, and activities and the location and
32 extent of the proposed district.

33 (2) The number, date of adoption, and title of the resolution of
34 intention.

35 (3) The time and place where the public hearing was held
36 concerning the establishment of the district.

37 (4) A determination regarding any protests received. The city
38 shall not establish the district or levy assessments if a majority
39 protest was received.

1 (5) A statement that the properties, businesses, or properties
2 and businesses in the district established by the resolution shall be
3 subject to any amendments to this part.

4 (6) A statement that the improvements, maintenance, and
5 activities to be conferred on businesses and properties in the district
6 will be funded by the levy of the assessments. The revenue from
7 the levy of assessments within a district shall not be used to provide
8 improvements, maintenance, or activities outside the district or
9 for any purpose other than the purposes specified in the resolution
10 of intention, as modified by the city council at the hearing
11 concerning establishment of the district.

12 (7) A finding that the property or businesses within the area of
13 the property and business improvement district will be benefited
14 by the improvements, maintenance, and activities funded by the
15 proposed assessments, and, for a property-based district, that
16 property within the district will receive a special benefit.

17 (8) In a property-based district, the total amount of all special
18 benefits to be conferred on the properties within the property-based
19 district.

20 (b) The adoption of the resolution of formation and, if required,
21 recordation of the notice and map pursuant to Section 36627 shall
22 constitute the levy of an assessment in each of the fiscal years
23 referred to in the management district plan.

24 SEC. 18. Section 36628.5 of the Streets and Highways Code
25 is amended to read:

26 36628.5. The city council may levy assessments on businesses
27 or on property owners, or a combination of the two, pursuant to
28 this part. The city council shall structure the assessments in
29 whatever manner it determines corresponds with the distribution
30 of benefits from the proposed improvements, maintenance, and
31 activities, provided that any property-based assessment conforms
32 with the requirements set forth in paragraph (2) of subdivision (k)
33 of Section 36622.

34 SEC. 19. Section 36632 of the Streets and Highways Code is
35 amended to read:

36 36632. (a) The assessments levied on real property pursuant
37 to this part shall be levied proportionally to the special benefit
38 conferred on the real property, and shall not exceed the reasonable
39 cost of the proportional special benefit conferred on the real
40 property. Any additional costs of providing general benefits shall

1 not be included in the amounts assessed. The city council may
2 classify properties for purposes of determining the special benefit
3 conferred on property by the improvements, maintenance, and
4 activities conferred pursuant to this part.

5 (b) Assessments levied on businesses pursuant to this part shall
6 be levied on the basis of the estimated benefit to the businesses
7 within the property and business improvement district. The city
8 council may classify businesses for purposes of determining the
9 benefit to the businesses of the improvements, maintenance, and
10 activities conferred pursuant to this part.

11 (c) Properties zoned solely for no more than four residential
12 units that are used solely for residential purposes or zoned for
13 agricultural use are presumed conclusively not to receive special
14 benefit from the improvements, maintenance, and service activities
15 funded through these assessments, and shall not be subject to any
16 assessment pursuant to this part.

17 SEC. 20. Section 36650 of the Streets and Highways Code is
18 amended to read:

19 36650. (a) The owners' association shall cause to be prepared
20 a report for each fiscal year, except the first year, for which
21 assessments are to be levied and collected to pay the costs of the
22 improvements, maintenance, and activities described in the report.
23 The owners' association's first report shall be due after the first
24 year of operation of the district. The report may propose changes,
25 including, but not limited to, the boundaries of the property and
26 business improvement district or any benefit zones within the
27 district, the basis and method of levying the assessments, and any
28 changes in the classification of property, including any categories
29 of business, if a classification is used.

30 (b) The report shall be filed with the clerk and shall refer to the
31 property and business improvement district by name, specify the
32 fiscal year to which the report applies, and, with respect to that
33 fiscal year, shall contain all of the following information:

34 (1) Any proposed changes in the boundaries of the property and
35 business improvement district or in any benefit zones or
36 classification of property or businesses within the district.

37 (2) The improvements, maintenance, and activities to be
38 provided for that fiscal year.

39 (3) An estimate of the cost of providing the improvements,
40 maintenance, and activities for that fiscal year.

1 (4) The method and basis of levying the assessment in sufficient
2 detail to allow each real property or business owner, as appropriate,
3 to estimate the amount of the assessment to be levied against his
4 or her property or business for that fiscal year.

5 (5) The *estimated* amount of any surplus or deficit revenues to
6 be carried over from a previous fiscal year.

7 (6) The *estimated* amount of any contributions to be made from
8 sources other than assessments levied pursuant to this part.

9 (c) The city council may approve the report as filed by the
10 owners' association or may modify any particular contained in the
11 report and approve it as modified. Any modification shall be made
12 pursuant to Sections 36635 and 36636.

13 The city council shall not approve a change in the basis and
14 method of levying assessments that would impair an authorized
15 or executed contract to be paid from the revenues derived from
16 the levy of assessments, including any commitment to pay principal
17 and interest on any bonds issued on behalf of the district.

18 SEC. 21. Section 36651 of the Streets and Highways Code is
19 amended to read:

20 36651. The management district plan may, but is not required
21 to, state that an owners' association will provide the improvements,
22 maintenance, and activities described in the management district
23 plan. If the management district plan designates an owners'
24 association, the city shall contract with the designated nonprofit
25 corporation to provide services.